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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

RAFFI Z. DAGHLIAN et al.,
Plaintiffs and Respondents,
v.
ZOHRAB DAGHLIAN, Individually and
as Trustee, etc., et al.,
Defendants and Appellants.

B254212

(Los Angeles County
Super. Ct. No. BP117393)

NEVART DAGHLIAN et al.,
Petitioners,
v.
THE SUPERIOR COURT OF
LOS ANGELES COUNTY,
Respondent;
RAFFI Z. DAGHLIAN et al.,
Real Parties in Interest.

B267069

(Los Angeles County
NW Trial Ct. No. 15P03713;
App. Div. No. BV031514)

APPEAL from a judgment of the Superior Court of Los Angeles County. Reva G. Goetz, Judge. Appeal dismissed.

ORIGINAL PROCEEDINGS; petition for writ of mandate. Elaine W. Mandel, Judge. Stay vacated. Petition denied.

Nevart Daghlilian, in pro. per., and Zohrab Daghlilian, in pro. per., for Defendants, Appellants, and Petitioners.

Affeld Grivakes Zucker LLP, David W. Affeld, and Peter Shimamoto, for
Plaintiffs and Respondents Raffi Z. Daghlilian et al.

No appearance for Respondent Superior Court of Los Angeles County.

Green & Marker and Richard A. Marker for Real Parties in Interest Raffi Z.
Daghlilian et al.

Raffi Z. Daghlilian and Sarkis Z. Daghlilian (the brothers) sued their parents, Zohrab and Nevart Daghlilian, to revoke a trust the parents allegedly established to defraud the brothers (the trust litigation). The trial court agreed with the brothers and declared the trust void. As a result, the brothers regained title to property they had contributed to the trust, including the parents' residence. The parents moved for a new trial and, after it was denied, appealed from the judgment.

Meanwhile, the brothers successfully pursued an unlawful detainer action against the parents based on the determination in the trust litigation that they owned the parents' residence. The parents appealed the unlawful detainer judgment to the appellate division of the superior court, then filed in this court a petition for writ of mandate and prohibition and a request to stay execution of their eviction pending the appeal in the trust litigation. We issued a temporary stay and consolidated the writ proceeding with the appeal in the trust litigation.

We agree with the brothers that the parents' appeal is untimely and therefore dismiss it. Because the parents' writ petition was based on the premise that we would reverse the judgment in the trust litigation, we vacate the stay and deny the petition.

FACTUAL AND PROCEDURAL SUMMARY

A. *The Trust Litigation and the Appeal (B254212)*

In 2005 the brothers transferred certain real property and other assets into a trust, which named the parents as trustees. The real property included the parents' residence on Stone Lane in Glendale.

In 2009 the brothers sued the parents, alleging that the parents fraudulently induced them to transfer their property into the trust and then used the trust property to enrich themselves and their daughters (the brothers' siblings) while depriving the brothers of the use and proceeds of the property. Among other relief, the brothers sought a declaration revoking the trust, an accounting, the return of money had and received, imposition of a constructive trust, and damages for fraud and conversion.

The court tried the case over eight days in 2011. In a written statement of decision, the court found that “the trust had an unlawful purpose, to defraud [the brothers] of their property by the exercise of undue influence by [the parents].” The court declared the trust “void *ab initio*, having been created for an illegal purpose,” and ordered that title to the property that the brothers had transferred into the trust, including the Stone Lane residence, be returned to them.

The court filed the judgment on June 26, 2013. No one served the parents with a notice of entry of the judgment or a copy of the judgment.

The parents filed a motion for new trial on December 20, 2013, which the court denied on January 24, 2014.

The parents filed a notice of appeal from the judgment on January 31, 2014.¹

B. *The Unlawful Detainer Action and the Writ of Mandate (B267069)*

In May 2015, the brothers filed an unlawful detainer complaint against the parents concerning the Stone Lane residence. After a trial in July 2015, the court awarded possession of the Stone Lane residence to the brothers, effective October 1, 2015.

On August 27, 2015, the parents filed a notice of appeal from the unlawful detainer judgment to the appellate division of the superior court. Two weeks later, the appellate division denied the parents' petition for a writ of supersedeas and request for a stay.

On September 25, 2015, the parents filed in this court a petition for a writ of mandate, prohibition, or other appropriate relief, seeking an immediate stay of execution

¹ The brothers' siblings were defendants in the trust litigation. They are not parties in this appeal.

of the unlawful detainer judgment. The writ petition is based on the premise that the judgment in the trust litigation, which transferred title to the Stone Lane residence to the brothers, will be reversed by this court and, consequently, the trust will be validated and title to the property restored to them. We issued a stay pending the appeal in the trust litigation and consolidated the two proceedings.

DISCUSSION

The brothers contend that the appeal should be dismissed as untimely. We agree.

Generally, there are three possible deadlines for filing a notice of appeal:

(1) 60 days after the superior court clerk serves on the party filing the notice of appeal a notice of entry of judgment or a filed-stamped copy of the judgment; (2) 60 days after a party serves on the party filing the notice of appeal a notice of entry of judgment or a filed-stamped copy of the judgment; or (3) 180 days after entry of judgment. (Cal. Rules of Court, rule 8.104(a)(1).) Whichever deadline occurs first applies. (*Ibid.*) Here, neither the court clerk nor a party served on the parents a notice of entry of judgment or a copy of the judgment. Therefore, unless extended by another rule, the applicable deadline is 180 days after the entry of judgment.

When, as here, the court denies a motion for new trial, the time to appeal is extended until the earliest of: (1) 30 days after the superior court clerk or a party serves an order denying the motion or a notice of entry of that order; (2) 30 days after the motion is denied by operation of law; or (3) 180 days after entry of judgment. (Cal. Rules of Court, rule 8.108(b)(1).) The extensions provided by this rule, however, “cannot lengthen the time for noticing an appeal beyond 180 days after the date of entry of the appealable judgment”; “the 180-day deadline is the *outside* limit in all such cases.” (Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2015) ¶ 3:62, p. 3-32; see *City of Los Angeles v. Glair* (2007) 153 Cal.App.4th 813, 818 (*Glair*); *In re Marriage of Eben-King & King* (2000) 80 Cal.App.4th 92, 109.)

Under these rules, the last date that the parents could have filed a timely notice of appeal was 180 days after entry of judgment. The court entered the judgment in this case

on June 26, 2013. The parents filed their notice of appeal 219 days later on January 31, 2014. They were 39 days late.

“The time for appealing a judgment is jurisdictional; once the deadline expires, the appellate court has no power to entertain the appeal.” (*Van Beurden Ins. Services, Inc. v. Customized Worldwide Weather Ins. Agency, Inc.* (1997) 15 Cal.4th 51, 56; see also *Hollister Convalescent Hosp., Inc. v. Rico* (1975) 15 Cal.3d 660, 662.) Equitable considerations that are available to excuse a default in other situations are not applicable to a late notice of appeal (*In re Marriage of Eben-King & King, supra*, 80 Cal.App.4th at p. 109), and we cannot reach the merits of the appeal by treating it as a petition for an extraordinary writ (*Mauro B. v. Superior Court* (1991) 230 Cal.App.3d 949, 953). Nor can the appeal be saved by treating it as an appeal from the order denying the parents’ motion for new trial, a nonappealable order. (See *Hamasaki v. Flotho* (1952) 39 Cal.2d 602, 608; *Glair, supra*, 153 Cal.App.4th at pp. 819-820.)

The parents, anticipating this issue in their opening brief, point out that no one served the judgment on them. This fact does not help them. The failure to serve a notice of entry or copy of the judgment is the reason why the 180-day deadline applies; it is not an excuse for failing to comply with that deadline. (*Kimball Avenue v. Franco* (2008) 162 Cal.App.4th 1224, 1228.)

The parents also assert, without citation to authority, that a notice of appeal must be filed “no later than 45 days after the first Notice of Motion for New Trial is filed.” They are wrong. As discussed above, the outside limit for the filing of a notice of appeal is 180 days after the entry of judgment regardless of whether or when a party moves for a new trial.

Because the appeal is untimely, it is dismissed. Because the parents’ writ petition was based on the argument that we would reverse the judgment in the trust litigation, we vacate the stay and deny the petition.

DISPOSITION

With respect to case No. B254212, the appeal is dismissed. Respondents are entitled to recover their costs on appeal.

The stay issued in case No. B267069 is vacated and the petition is denied. Real Parties in Interest are entitled to recover their costs.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

JOHNSON, J.

LUI, J.